



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Ranco Construction, Inc.

File: B-244456

Date: October 21, 1991

James H. Landgraf, Esq., Guest, Domzalski, Kurts and Landgraf, for the protester.
R. I. Rae for Barnes Electric Co., Inc., an interested party.
Robert J. Mackichan, Jr., Esq., Manuel B. Oasin, Esq., and Robert J. McCall, Esq., General Services Administration, for the agency.
Paul E. Jordan, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where invitation for bids (IFB) requires submission of alternate bids representing different methods of performance and provides that award will be made to conforming bid that is most advantageous to government considering price and price related factors, protest that award must be made to lowest bidder for either alternative is denied since the only reasonable interpretation of the IFB is that award will be made to low bidder on the alternative chosen by the agency.

DECISION

Ranco Construction, Inc. protests the award of a contract to Barnes Electric Co. under invitation for bids (IFB) No. GS-03P-91-CDC-0001, issued by the General Services Administration (GSA) for removal and replacement of electrical transformers at the United States Mint in Philadelphia, Pennsylvania. Ranco contends that it should have received the award because it submitted the lowest bid.

We deny the protest.

The IFB solicited bids for all labor, materials, and equipment necessary to remove and dispose of 12 PCB contaminated transformers, provide 10 new dry transformers, and perform other related work at the Mint. While the disposal specifications provided that all PCB materials were to be disposed

of at Environmental Protection Agency (EPA) licensed hazardous waste disposal facilities, and that all PCB fluids, flushing fluids, and contaminated materials were to be incinerated, bidders were required to provide alternate lump-sum bids based upon the method of disposal of the removed transformer "carcasses."

The first method (Bid One) required the contractor to incinerate the carcass as a unit or "decommission" it, including break up of the carcass, incineration of insulation and small parts, smelting of copper, and either smelting or disposal of iron through an EPA approved, licensed scrap dealer. The goal of this method was that "there shall be no Government responsibility for possible future PCB clean-up." The second method (Bid Two) required the "entire flushed, drained carcass" to be "disposed of in an EPA approved landfill." According to the agency report, the alternate bids were required because the more advantageous method, incineration, was more expensive to accomplish, and the agency was uncertain whether it would have sufficient funds available.

The disposal specifications noted that the "Government's selection of Contractor will, in part, be based on ultimate costs and responsibilities." The IFB also provided that the "low bidder for purposes of award is the responsible bidder offering the lowest price for the base bid," earlier defined as the alternate lump sum bids. It further provided that:

"The Government . . . will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.

"The Government may accept any item or group of items of a bid"

See Federal Acquisition Regulation (FAR) § 52.214-10.

Eighteen bids were received and opened on February 20, 1991. Evaluation of the bids revealed that Barnes was low on Bid One (incineration) while Rancc was low on Bid Two (landfill disposal). Because the Mint had advised GSA, after bid opening, that there were sufficient funds to award on the basis of Bid One, GSA determined to award the contract to Barnes for \$626,000. Ranco protested to the agency that it should receive the award because its bid of \$562,461 for Bid

Two was lower than either of Barnes' alternate bids. Subsequent to the agency's denial of the protest and award to Barnes, Ranco filed a protest with our Office.

Ranco interprets the IFB's failure to express a preference for either alternative, coupled with the IFB's award provisions, as requiring that award be made to the lowest responsible bidder overall. In the alternative, Ranco contends that the IFB was ambiguous with respect to the award basis and therefore defective, requiring cancellation of the IFB. We disagree.

We find that the award in this case was consistent with the IFB provisions and the IFB was not ambiguous as to how the awardee would be selected. "Requirements that contracts for public work be let to the lowest bidder are not violated when specifications are drawn for different work, bids are sought on different bases, and a choice is not made by the contracting officials until after all the bids are opened." See H.M. Byars Constr. Co., 54 Comp. Gen. 320 (1974), 74-2 CPD ¶ 233; Moore Serv., Inc., et al., B-204704.2 et al., June 4, 1982, 82-1 CPD ¶ 532.

In view of the request for alternate bids based upon different methods of disposal, it should have been clear to bidders that the agency contemplated award on the basis of the method which proved more advantageous to the government. Since the incineration method is more involved and generally understood by firms responding to the IFB as the more expensive of the two alternatives¹, it is unreasonable to conclude that the lowest price bid, regardless of method, would determine the award.

In this regard we note that the IFB advised that the award would be made to the most advantageous bid, based upon ultimate cost and responsibility, which refers to a limit on EPA's responsibility for further PCB clean up. It further advised that the government could accept any item or group of items in making the award. Consequently, the only reasonable interpretation of the IFB is that the low bidder on the methodology chosen by GSA would be awarded the contract. If Ranco believed there was any ambiguity with respect to how the award was to be made, it was incumbent upon the protester to seek clarification or protest the IFB provisions prior to the bid opening date. See 4 C.F.R. § 21.2(a)(1) (1991), as amended, 56 Fed. Reg. 3759 (1991).

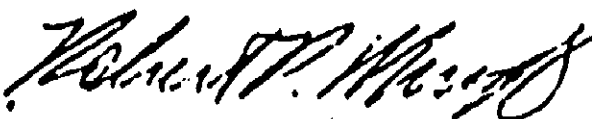
¹Fifteen of the eighteen bidders submitted higher bids for the Bid One alternative.

Since all bidders were on notice that the agency was considering alternate approaches, and all submitted alternate bids as directed by the IFB, with 15 out of 18 submitting higher bids for the Bid One alternative, we find no evidence of competitive prejudice by this method of procurement. Ranco's mere assertion that had the preference been spelled out, it "could have dramatically altered [its] bidding philosophy" does not establish that it was prejudiced.

With respect to the propriety of making the award decision on the basis of the availability of funds after bid opening, where additional funds become available after bid opening and before an award is made, an agency may rely upon those funds in making an award, even if the additional funding affects the determination of the alternative to be awarded. Rock, Inc., B-186961, Nov. 9, 1976, 76-2 CPD ¶ 394; Praxis, Ltd., B-186157, Aug. 10, 1976, 76-2 CPD ¶ 146. In this case, the agency did not provide specific notice in the IFB that it preferred one alternative over the other or that the award decision would be based upon the availability of funds. We recognize that this lack of notice plus the fact that the agency made its decision based on funding information supplied after bid opening could lead bidders to be concerned that the agency manipulated award through application of different funding amounts. See, e.g., Huntington Constr. Inc., 67 Comp. Gen. 499 (1988), 88-1 CPD ¶ 619; H.M. Byars Constr. Co., supra.

Here, however, we find no evidence of such manipulation, nor of any prejudice or unfairness to bidders as a result of GSA's actions. Rather, the use of only two alternatives, coupled with the agency's interest in ensuring the limitation of its responsibility for further clean up of PCBs, evidence that the award was legitimately based upon the availability of funds for the method most advantageous to the government. We will not find an agency's actions improper based upon mere inference or conjecture. See Rodriguez & De Valle, Inc., B-239224, July 12, 1990, 90-2 CPD ¶ 29.

The protest is denied.


James F. Hinchman
General Counsel